

Wednesday, 27 November 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Paper No. 564 - Application of the
prosecution for leave to present the evidence in
chief of Major K. A. deWeerd, a witness on behalf
of the prosecution in the form of a prepared
statement instead of by oral examination.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

JACK GREENBERG
Chief Court Reporter
IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. JUSTICE W. G. F. BORGERHOFF MULDER,
Associate Counsel, acting on
behalf of the Kingdom of the
Netherlands;

MR. A. T. LAVERGE;

MR. G. OSMOND HYDE; and

MR. SOLIS HORWITZ.

FOR THE DEFENSE SECTION:

MR. WILLIAM LOGAN, JR., Counsel for
the Accused KIDO, Koichi;

MR. MICHAEL LEVIN, Counsel for
the Accused KAYA, Okinori and
the Accused SUZUKI, Teiichi; and

MR. OWEN CUNNINGHAM and Mr. Fujio UCHIDA,
Counsel for the Accused OSHIMA,
Hiroshi.

FOR THE OFFICE OF THE GENERAL SECRETARY,
ETC:

JUDGE E. H. DELL, Legal Advisor; and

MR. CHAS. A. MANTZ, Clerk of the Court.

The proceeding was begun at 0902.

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Paper
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THE PRESIDENT: This is Paper No. 564. It is the application to have the Dutch evidence presented in the form of a prepared statement. It is part heard. I reserved the decision until Mr. Logan had an opportunity of reading the reduced statement.

MR. LOGAN: Yes, your Honor. I have done that, and it has been reduced to 56 pages whereas it was originally 129 pages. But we still interpose the same objections we did to the original document and to its use in Court.

The revised document still has a number of conclusions and inferences which should not, in any event, be a part of a statement such as we have there; and our objections were fully set forth in the original hearing, and we renew those at this time. I think your Honor is fully aware of the objections we interposed.

THE PRESIDENT: Yes.

MR. CUNNINGHAM: I would like to add a view to it. If the statement is permitted, we ought to have the right to cross-examine the witness on all of the features of the statement and not be precluded for the additional conclusions that are

contained in it so long as the prosecution has had an opportunity to reduce it. Although there is much material in it that is now not sufficiently connected with the issues which are raised by the Indictment to warrant admission of it, if the Court admits it, then we should surely be permitted to explore and show its lack of value and lack of bearing on the issues involved in the case.

THE PRESIDENT: You would have the same right to cross-examine as you would have in respect to any other statement of the kind, Mr. Cunningham.

MR. CUNNINGHAM: We have been pretty well restricted on those other documents and affidavits.

THE PRESIDENT: Certainly, restriction is involved, I must say.

MR. LEVIN: Mr. President, I have not had an opportunity to examine the statement, but I assume the same ruling of the Court will apply with reference to opinions and conclusions, that is, the Court will totally disregard any opinions or conclusions that are contained in the statement. As I say, I do not know that they are.

THE PRESIDENT: Unless the witness is an expert and the question or the answer calls for his

particular expert knowledge.

MR. LEVIN: Assuming that he is qualified as an expert to testify as such. But, if he has not qualified, and if he has opinions and conclusions, why, then, the Court will apply the same ruling as it has heretofore indicated.

THE PRESIDENT: I could not here state what limits would be imposed on cross-examination. I would not know until I got into Court and heard what the other judges thought about any particular question.

MR. CUNNINGHAM: It is pretty hard to read this statement and figure out what they are trying to prove by it, what issues in the case they are trying to establish by the evidence that they are setting forth in this statement; very difficult.

THE PRESIDENT: It seems to be a genuine attempt to cut the Dutch phase down to what the prosecution think is a bare minimum. I will give the witness permission to read his statement in the reduced form; and, of course, the defense will have all the rights of cross-examination, which is in accordance with the American rule.

(Whereupon, at 0906, the proceeding was concluded.)